[BE] Battling over Peer-to-peer Activities

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On 26 November 2004 the presiding judge of the regional court in Brussels delivered an order with so far considerable effect in the world of copyright and Internet service providers. It is the latest episode in the battling between rightholders and ISPs over software (such as KaZaA) for downloading musical works in peer-to-peer mode, ie from one computer to another without passing through a centralised server, and without payment. Belgian copyright law allows a complainant to apply to the courts to have a stop put to infringements of copyright in the accelerated "urgent matter" form but with a decision on the merits of the case. Thus on 24 June 2004 SABAM, the main society for the collective management of royalties due to composers and writers of music, had an order served on Tiscali, one of the main ISPs on the Belgian market, ordering the company to make it impossible for its clients to send or receive files containing musical works, or to block such messages. The order of 26 November 2004 confirms firstly that the exchange of music files using peer-to-peer technology does indeed constitute infringement of copyright, since it infringes the exclusive right of reproduction and the exclusive right of communication to the public held by the rightholders, and secondly that Tiscali, although it did not itself commit a breach, provided assistance in committing the infringement. The court nevertheless refrained from demanding cessation, as it held that SABAM had not produced evidence that the order it was requesting would produce an effective result, and that there were in fact technical ways of preventing infringement of copyright. The court therefore ordered the preparation of a report by an inter partes expert to see whether effective technical measures could in fact be envisaged to put an end to the infringement of copyright being committed by Internet users.

Order by the presiding judge of the regional court in Brussels, 26 November 2004, 04/8975/A

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